

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 30 2007

at 4 o'clock and 20 min. P.M.
SUE BEITIA, CLERK

CC: TL (DAE)
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LODGED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MAY 24 2007
10:10 AM Agg
CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LESLIE A. KAKINAMI,

Defendant.

) CR. NO. 05-00373 DAE
)
) DEFENDANT'S EX PARTE MOTION
) TO EXTEND TIME WITHIN WHICH
) TO FILE NOTICE OF APPEAL AND
) MOTION FOR CERTIFICATE OF
) APPEALABILITY FROM DENIAL
) OF DEFENDANT'S SECTION 2255
) MOTION; DECLARATION OF
) COUNSEL; ORDER GRANTING
) DEFENDANT'S EX PARTE MOTION
) TO EXTEND TIME WITHIN WHICH
) TO FILE NOTICE OF APPEAL AND
) MOTION FOR CERTIFICATE OF
) APPEALABILITY FROM DENIAL
) OF DEFENDANT'S SECTION 2255
) MOTION; AND CERTIFICATE OF
) SERVICE

DEFENDANT'S EX PARTE MOTION TO EXTEND TIME
WITHIN WHICH TO FILE NOTICE OF APPEAL AND
MOTION FOR CERTIFICATE OF APPEALABILITY
FROM DENIAL OF DEFENDANT'S SECTION 2255 MOTION

COMES NOW, defendant LESLIE A. KAKINAMI, in the above-entitled
action and moves this Honorable District Court, *ex parte*, for an order granting extension

of time within which to file notice of appeal and motion for certificate of appealability from the denial of defendant's previously filed *Section 2255* motion.

This *ex parte* motion is based upon the attached declaration of counsel and the provisions of *Rule 11* of the *Rules Governing Section 2255 proceedings for the United States District Court*, *Rule 4(a)(1)(A)* and *Rule 4(a)(5)(a)(i)(B)* of the *Federal Rules of Appellate Procedure*.

DATED: Honolulu, Hawaii, 5-24, 2007.



CHRISTOPHER R. EVANS, ESQ.
Attorney for Defendant

DECLARATION OF COUNSEL

CHRISTOPHER R. EVANS, declares as follows:

1. Declarant is an attorney licensed to practice law and is presently practicing law in the City and County of Honolulu, State of Hawaii, and represents defendant above-named;

2. *Rule 11* of the *Rules Governing Section 2255 proceedings for the United States District Court* states that the time to appeal a denial of a *Section 2255* motion is set forth in *Rule 4(a)* of the *Federal Rules of Appellate Procedure*. *Rule 4(a)(1)(A)* of the *Federal Rules of Appellate Procedure* specifies 30 days' time after the judgment or order appealed from is entered;

3. In this particular case, the order to be appealed is the amended order denying defendant's motion to vacate, set aside or correct sentence entered May 11, 2007. A straight 30-day calendar count from May 11, 2007 shows that the deadline to


file the notice of appeal to be Monday, June 11, 2007 (receiving the benefit of the 30th day falling on a Sunday). Pursuant to *Rule 4(a)(5)(A)(i)(B)&(C)*, the Court may grant an additional 30 days after the June 10, 2007 date within which to file a notice of appeal;

4. The same rules cited immediately above also provides that defendant may move the Court *ex parte* for said extension of time.

5. The reason for the extension of time is because contemporaneously with the presentation of this *ex parte* motion, defendant has also presented a *Rule 36, Federal Rules of Criminal Procedure* motion to correct and/or amend sentence, and should the Court grant said motion, then the appeal from the amended order denying defendant's *Section 2255* motion to vacate, set aside or correct sentence would be moot. Defendant needs time for the Court to hear said motion. Furthermore, the record and file would not be transmitted to the Clerk of the United States Court of Appeals and deprive this Court of jurisdiction over the record and file. Accordingly, defendant respectfully requests this Honorable Court to grant the instant *ex parte* motion and to extend the time within which to file a notice of appeal and motion for certificate of appealability by 30 days from the initial 30-day filing deadline of June 11, 2007.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED: Honolulu, Hawaii, 5-28, 2007.



 CHRISTOPHER R. EVANS, ESQ.
 Attorney for Defendant